IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION NO. 938 (MS) OF 2005

Dharam Lal,
S/o late Shri Manglu Lal,
R/o Village Gulabkoti, Patwari Circle Langsi,
Tehsil Joshimath, District Chamoli. .....Petitioner.

Versus

1. State of Uttaranchal, through Collector.
2. Union of India, through Secretary, Road Transport & Highway Ministry, Government of India, New Delhi.
3. Commanding Officer, 66 RCC, through 56 APO.

.....Respondents.

Dated: 14.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri R.P. Nautiyal, Advocate for the petitioner and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 08.07.2005 passed by the District Judge, Chamoli in Misc. Civil Appeal No. 6 of 2005 Dharma Lal Vs. Union of India and others; and order dated 11.05.2005 passed by the Civil Judge (Senior Division), Chamoli in Misc. Civil Suit No. 13 of 2004 Dharma Lal Vs. Union of India and others.

Briefly stated, a suit was filed by the plaintiff against the Union of India for the recovery of Rs. 3,64,828/-. Along with the suit, the petitioner has also filed an application under Order 33 Rule 1 of the Code of Civil Procedure for seeking permission to issue as indigent person. The said permission

has been refused on the ground that he has landed property, when in point of fact, the petitioner has submitted that there is no land available with him and during the floods in the year, 1970, the entire land has become unfertile and nothing has left with the petitioner. Order 33 Rule 1 of the Code of Civil Procedure provides as under:-

"1. Suits may be instituted by indigent person.- *Subject to the following provisions, any suit may be instituted by [an indigent person].*

[Explanation 1.- A person is an indigent person.-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand repees other than the property exempt from attachment in execution of a decree, and the subject – matter of the suit.

Explanation II. Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.-Where the plaintiff sues in a representative capacity, the question whether he is an idigent person shall be determined with reference to the means possessed by him in such capacity."

In ***Sanyukta v. Prem Kumar AIR 1974 Pujab and Haryana 203,*** it has been observed as under:-

"It is significant to mention that the word used in this part is "means" and not "property". In other words, the

question to be seen is not whether he possesses sufficient property, which can enable him to pay the prescribed fee, but whether he has sufficient means for this purpose. He may or may not have the requisite amount with him, but if he an raise the requisite money on some property, he will not be considered to be a pauper."

In ***O.P. Neelam Hosiery Works and another Vs. State Bank of India and others AIR 1994 Himachal Pradesh 1,*** it has been observed as under:-

"It is well settled that the provisionis of O. 33 R. 1, C.P.C. have been enacted to enable poor persons to seek justice by filing suits or appeals without Court-fee and in this context, the sufficient means would not be sufficient property and includes such means on which the bare living of the plaintiff or the appellant and the members of his family is dependent. In fact, what is intended is capacity to raise funds by normal and available lawful means and not by any means whatsoever, improper or illegal. It cannot be the purpose of this legislation that the indigent person should first deprive himself of the sole means of livelihood or alienate all his assets and seek justice in penury. (Please see : A. Prabhakran Nair v. K.P. Neelkantan Pillai, AIR 1988 Ker 267 and Rambhai Punjabhai Vinchiya v. The Gujarat State Road Transport Corporation, Ahmedabad, AIR 1975 Guj 94)."

A perusal of the order passed by the courts below only shows that the petitioner had landed property. There is no evidence on record to show that the petitioner has the cash money to pay the amount and as such it cannot be expected from the petitioner to sell away the property to pay the court fees.

It is well settled that in order to prove indigent person, the petitioner has to establish that he has no 'means' to pay the

amount and there is no source of income to the petitioner to meet the court fees as provided under Order 33 Rule 1 of the Code of Civil Procedure. The word ‘means’, therefore, cannot be understood to be property.

In view of the above, there being no evidence on the record to show that the petitioner has sufficient ‘means’ available and as such the application for declaring the petitioner as indigent person has wrongly been refused by the two courts below.

In view of the above, writ petition is allowed. A writ of certiorari is issued quashing the order dated 08.07.2005 and 11.05.2005 (Annexures No. 6 and 4 to the writ petition).

No order as to costs.

(Rajesh Tandon, J.)

14.06.2006

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